

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NATHAN FOUNTAINE,

Plaintiff,

V.

MICHAEL J. ASTRUE, Commissioner of
the Social Security Administration

Defendant.

CASE NO. 10-CV-05953 BHS JRC

**REPORT AND
RECOMMENDATION ON
STIPULATED MOTION FOR
REMAND**

This matter has been referred to Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Magistrates Rule MJR 4(a)(4), and as authorized by Mathews, Secretary of H.E.W. v. Weber, 423 U.S. 261 (1976). This matter is before the Court on Defendant's stipulated motion to remand the matter to the Administration for further consideration. (ECF No. 25.)

1 After reviewing Defendant's stipulated motion and the remaining record, the undersigned
2 recommends that the Court grant Defendant's motion, and reverse and remand this matter to the
3 Administration pursuant to sentence four of 42 U.S.C. § 405(g).

4 Based on the parties' stipulation, this Court recommends that the Administrative Law
5 Judge assigned to this matter following remand ("the ALJ") hold a new hearing and issue a new
6 decision. The ALJ should: (1) further evaluate the opinions of Bryce A. McCollum, Ph.D., and
7 Lawrence J. Lyon, Ph.D.; (2) further assess Plaintiff's mental impairments and determine
8 whether or not his drug and alcohol abuse - is material to a finding of disability consistent with
9 the Social Security Act, applicable regulations, and applicable case law; (3) consider the
10 observations and findings of Plaintiff's mental health therapist in accordance with Social
11 Security Ruling ("SSR") 06-3p, and if the ALJ elects to reject them, provide germane reasons for
12 doing so; (4) in light of the expanded record, re-evaluate Plaintiff's credibility and residual
13 functional capacity; and, (5) with the assistance of a vocational expert, determine whether or not
14 there are other jobs existing in significant numbers in the national economy to which Plaintiff
15 could make an adjustment.

16 This Court further recommends that the ALJ take any other actions necessary to develop
17 the record. In addition, Plaintiff should be allowed to submit additional evidence and arguments
18 to the ALJ on remand.

19 The parties stipulate, and the Court agrees, that this reversal and remand is recommended
20 pursuant to sentence four of 42 U.S.C. § 405(g). Following proper presentation to the Court, the
21 parties agree that Plaintiff is entitled to reasonable attorney's fees, expenses and costs pursuant to
22 the Equal Access to Justice Act, 28 U.S.C. § 2412(a), (d).

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Given the facts and the parties' stipulation, the Court recommends that the District Judge
immediately approve this Report and Recommendation and order that the case be **REVERSED**
and **REMANDED** pursuant to sentence four of 42 U.S.C. § 405(g).

4 Dated this 28th day of September, 2011.

J. K. Ward Creative

J. Richard Creature
United States Magistrate Judge